

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF MISSISSIPPI  
NORTHERN DIVISION

TRAVIS BOLER, #125186

PETITIONER

V.

CIVIL ACTION NO. 3:21-CV-826-KHJ-BWR

WARDEN FRANKLIN D. BREWER

RESPONDENT

ORDER

Before the Court is the [13] Report and Recommendation (“Report”) of United States Magistrate Judge Bradley W. Rath. The Report recommends dismissing Petitioner Travis Boler’s [1] Petition for Writ of Habeas Corpus and denying his requests for an evidentiary hearing and appointment of counsel. [13] at 1. Written objections to the Report were due by May 9, 2023. *Id.* at 11–12. The Report notified the parties that failure to file written objections to the findings and recommendations by that date would bar further appeal in accordance with 28 U.S.C. § 636. *Id.*

When no party has objected to a magistrate judge’s report and recommendation, the Court need not review it de novo. 28 U.S.C. § 636(b)(1). Instead, the Report is reviewed under the “clearly erroneous, abuse of discretion and contrary to law” standard of review. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989).

Boler seeks habeas relief, contending the Circuit Court of Neshoba County erred in not suppressing evidence obtained in a warrantless search because no

exception applied. [1] at 2; [13] at 2. Respondent Warden Brewer filed a [8] Response arguing *Stone v. Powell*, 428 U.S. 465 (1976), bars the petition because Boler had the opportunity to adjudicate his Fourth Amendment claim in the trial court, on direct appeal to the Mississippi Court of Appeals, and in post-conviction proceedings. [13] at 2–3. Boler filed a [10] Rebuttal, arguing he did not receive the full and fair hearing required under *Stone* and requesting an evidentiary hearing “to further develop the facts and law” and appoint him counsel. *Id.* at 3. Warden Brewer filed a [11] Reply, opposing those requests.

The Magistrate Judge recommends dismissing the [1] Petition with prejudice because his Fourth Amendment claim is procedurally barred from federal habeas review, denying the hearing because Boler has not proven the Court has discretion to grant it, and denying Boler’s request for appointment of counsel because the interests of justice do not require it. *See* [13] at 5–11. Boler did not object to the Report, and the time to do so has passed. The Report is neither clearly erroneous nor contrary to law. Accordingly, it is adopted as the opinion of this Court.

IT IS, THEREFORE, ORDERED AND ADJUDGED that the [13] Report and Recommendation of United States Magistrate Judge Bradley W. Rath is adopted as the opinion of this Court. The Court DISMISSES Petitioner Travis Boler’s [1] Petition with prejudice.

The Court will issue a separate Final Judgment consistent with this Order.

SO ORDERED, this the 15th day of May, 2023.

s/ Kristi H. Johnson  
UNITED STATES DISTRICT JUDGE